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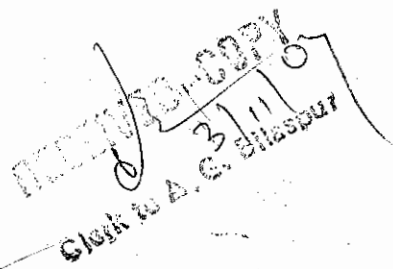
IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

W.P. NO. 4269 /2004

PETITIONER : Ravindra Kumar Bairagi, Aged about 27 yrs,
S/o. Shyamlal R/o. Village Kirari, P.S. & Tah.
Dabhara, District Janjgir-Champa (C.G.)

VERSUS

- RESPONDENTS :
- 1] State of Chhattisgarh,
Through: Secretary, Panchayat &
Gram Vikas Vibhag, Mantralaya,
D.K.S. Bhawan, Raipur (C.G.)
 - 2] Collector, Janjgir-Champa,
District Janjgir-Champa (C.G.)
 - 3] S.D.O. Dabhara,
District Janjgir-Champa (C.G.)
 - 4] Gram Panchayat Sukhapali,
Through: its Sarpanch, Tah. & Block
Dabhara, Distt Janjgir-Champa (C.G.)
 - 5] Chief Executive Officer,
Janpad Panchayat, Dabhara, District
Janjgir-Champa (C.G.)
 - 6] Puniram Banjara, Aged about 30 yrs,
S/o. Mahettarram R/o. Village
Sukhapali, Tahsil Dabhara, District
Janjgir-Champa (C.G.)
 - 7] Bhupendra Kumar Patel, Aged about
30 years, S/o. Ramadhar Patel, R/o.
Village Dabhara, District Janjgir-
Champa (C.G.)



WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA

- 1] PARTICULARS OF THE PETITIONER (S):
As stated above in the cause title.
- 2] PARTICULARS OF THE RESPONDENT (S):
As stated above in the cause title.
- 3] PARTICULARS OF THE ORDER(S) AGAINST, WHICH THIS
PETITION IS MADE.

The petitioner by way of instant writ petition calls in question the validity, illegality and propriety of the order passed by the

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR
(CHHATTISGARH)

Writ Petition No.4269 of 2004

Ravindra Kumar Bairagi

- Versus -

State of Chhattisgarh & others

POST FOR ORDER ON 26.4.2005

Sd/-
L.C.BHADOO
Judge

(98)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.4269 of 2004

Ravindra Kumar Bairagi

- Versus -

State of Chhattisgarh & others

Present: -

Mr. Manoj Paranjpe, Advocate : For the petitioner.
Mr. G.K. Beriwal, Dy. Adv. General : For respondent No.1 to 3.
Mr. B.D. Guru, Advocate : For respondent No.5.

Before Hon'ble Mr. L.C. Bhadoo, J.

ORDER

(Passed on 26/4. April, 2005)

1. The petitioner, who was appointed as Samvida Shikshak Grade-III in Gram Panchayat Sukhapali, District Janjgir-Champa by respondent No.4 through a selection after inviting applications from the eligible candidates, has questioned the legality and propriety of order dated 13.10.2004 (Annexure P-11) passed by the Additional Collector, Janjgir-Champa in Appeal No.5/A/98(15)/2003-04 affirming the order of Sub Divisional Officer (Revenue), Dabhara dated 26.2.2004 passed in Case No. 1/A-89 (15) 2003-04.
2. Brief facts leading to filing of this petition, as mentioned in the petition, are that process for recruitment of Samvida Shikshak Grade-III was taken up by Gram Panchayat Sukhapali, District Janjgir-Champa under the C.G. Panchayat Contract Teachers (Appointment & Conditions of Service) Rules, 2001, as amended on 27.7.2002, in that respect an advertisement inviting applications from the eligible candidates was published in the

newspapers and in response to that advertisement more than 70 candidates applied. Thereafter, according to the Rules a selection committee was constituted and after scrutinizing the applications 31 candidates were found eligible as per Annexure P-3, the candidates were called for interview and out of total 31 candidates only 10 candidates had appeared before the selection committee. A merit list was prepared (Annexure P-5) and in the said merit list the petitioner herein secured 72.5%, therefore, he was appointed as Samvida Shikshak Grade-III vide Annexure P-6 dated 23.8.2003 and in compliance of the said order the petitioner joined his duties. However, some written complaints were made by Puniram Banjara & Bhupendra Kumar Patel to the Chief Executive Officer, Janpad Panchayat, Dabhara (Annexure P-7 & P-8), who forwarded the same to the Sub Divisional Officer, Dabhara. On receiving complaints the Sub Divisional Officer issued notices to the Sarpanch & Secretary of Gram Panchayat-Sukhapali and they were directed to produce entire records regarding the selection of Samvida Shikshak Grade-III. However, the petitioner was not given any notice or opportunity of hearing and vide order dated 26.2.2004 (Annexure P-9) the SDO set aside the whole selection process of Samvida Shikshak Grade-III and directed the Panchayat to prepare a fresh list. Against the said order the petitioner had preferred an appeal before the Additional Collector, which was dismissed by the Additional Collector vide order Annexure P-10.

3. The case of the petitioner is that the Sub Divisional Officer, Dabhara conducted the enquiry without giving any opportunity of hearing to the petitioner, as no notice was given to him, therefore,

principles of natural justice have been violated and on that score only the impugned order is liable to be quashed.

4. Return has been filed on behalf of respondent No.5 in which it has been mentioned that alternative remedy was available to the petitioner and he should have approached the Director, Panchayat by filing a revision against the impugned order, which he has not availed, therefore, this writ petition is not maintainable and liable to be dismissed. It has further been mentioned that out of 11 candidates, 6 remain absent because the date of interview was not properly communicated to them and three candidates namely Tilak Ram Patel, Rakesh Kumar Patel, Hitendra as well as Rambhajan were granted zero marks for not having knowledge of local dialect, whereas the petitioner was awarded 25 marks. It has further been mentioned that being aggrieved by the selection process two candidates namely Bhupendra Kumar Patel & Puni Ram Banjara had preferred an appeal and made the complaints before the SDO, who enquired the matter, recorded the statements and found gross irregularities and illegalities, therefore, SDO directed for fresh selection. The concerned Sarpanch was granted opportunity of hearing, who submitted report before the SDO, therefore, in the facts and circumstances of the case it is denied that principles of natural justice have been violated. Even the petitioner preferred an appeal against the order of SDO where the petitioner was also heard and after considering the points raised by the petitioner the appeal was rejected, therefore, now the petitioner cannot argue that the principles of natural justice have not been complied with. In the enquiry it was also found that the candidates who were the residents of Chhattisgarh have not been granted 25 marks for knowledge of local dialect and even the

eligible candidates have not been given notice for appearing in interview that is why the SDO quashed the whole selection process.

5. Respondent Nos. 1 to 3 have adopted above return and prayed for dismissal of the petition.
6. I have heard Mr. Manoj Paranjpe, counsel for the petitioner, Mr. G.K. Beriwal, Dy. Advocate General for respondent Nos. 1 to 3 & Mr. B.D. Guru, counsel for respondent No. 5.
7. Learned counsel for the petitioner raised only point that Sub Divisional Officer before quashing the selection of petitioner ought to have given notice and opportunity of hearing to the petitioner, which was not given to him, therefore, the SDO has violated the principles of natural justice and only on this score the impugned order is liable to be quashed. He relied upon the decisions of the Hon'ble Apex Court in the matters of **B. Ramanjini & others Vs. State of Andhra Pradesh & others** reported in **AIR 2002 SCW 2069** & **Shridhar Dular Vs. Nagar Palika Jaunpur** reported in **AIR 1990 SC 307**. The other decisions on which learned counsel for the petitioner has placed reliance are **Mahendra Kumar Chaurasiya Vs. State of M.P. and others** reported in **2002 (3) M.P.L.J. 112** & **Jaswant Singh and others Vs State of M.P. and others** reported in **(2002) 9 Supreme Court Cases 700**.
8. On the other hand, Mr. Guru learned counsel for respondent No. 5 argued that in this case SDO conducted the enquiry from the concerned Sarpanch, perused the records and also recorded the statements of the candidates, therefore, it cannot be said that without giving opportunity to the concerned persons the SDO passed the order. He further argued that on enquiry the SDO

reached to the conclusion that selection was tainted with large-scale irregularities and manipulation, therefore, notice was not necessary to the petitioner before quashing the selection and in this respect he placed reliance on the judgment of the Hon'ble Apex Court in the matter of **Union of India and others Vs. O. Chakradhar** reported in (2002) 3 Supreme Court Cases 146.

9. Now coming to decisions relied upon by learned counsel for the petitioner. As far as the decision of the Hon'ble Apex Court in the matter of B. Ramanjini (supra) is concerned, in that case the Hon'ble Apex Court held that "*writ petition under Article 226 of the Constitution of India was filed calling in question the selection of teachers, but the selected candidates had not been impleaded as parties to the petition either in their individual capacity or in any representative capacity, the writ petition ought to have been dismissed only on this ground because their substantial rights to hold office came to be vitally affected.* But in my opinion, the above decision of the Hon'ble Apex Court is of no help to the petitioner. In that case writ petition was filed questioning the selection of the particular candidates and they were not made parties, therefore, the Court held that writ petition was liable to be dismissed on that score alone. However, in the present case the administrative enquiry was conducted by the SDO in which records were summoned and after perusal of the records the SDO reached to the conclusion that the Sarpanch committed irregularities, therefore, he passed the order for fresh selection. As far as the other decision of the Hon'ble Apex Court in the matter of Shridhar Dular (supra) is concerned, in that case also the Hon'ble Apex Court held that "*the High Court committed serious error in upholding the order of the Government dated*

13.2.80 in setting aside the appellant's appointment without giving any notice or opportunity to him. High Court had not given notice to the appellant, therefore, Apex Court held that " it is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector that right could not be taken away without affording opportunity of hearing to him. Therefore, any order passed in violation of principles of natural justice is rendered void. In that case, the Municipal Board Jaunpur issued advertisement inviting applications for appointment to the post of Tax Inspector and in that advertisement it was stated that existing employees of the Revenue Department of the Municipal Board were eligible for consideration along with outsiders. Respondent No.3, who was the senior most Tax Collector working in the Municipal Board, was called for interview but he refused to appear for the interview on the plea that the post of Tax Inspector should have been exclusively filled by promotion and as he was the senior most Tax Collector he should be promoted without considering any outsider. However, Municipal Board conducted the interview and selected the appellant, which came to be challenged by respondent No.3 before the Service Tribunal where respondent No.3 was allowed to make a representation to the Prescribed Authority i.e. Commissioner. When he made representation to the Commissioner, he set aside the order of Municipal Board and cancelled the appellant's appointment on the ground that respondent No.3 was entitled for promotion. Then the appellant filed a writ petition before the High Court and in that context the Hon'ble Apex Court held that "the Commissioner ought to have

given opportunity to the appellant before cancelling his appointment".

The facts of other judgment i.e. Jaswant Singh (supra) relied upon by learned counsel for the petitioner herein are that the appellants were appointed as Lower Division Clerk (LDC) in the year 1987, however, the Collector annulled the order in exercise of the powers under Section 83 of the Panchayat Adhiniyam, 1981. The Collector, on a finding that the prescribed procedure for appointment had not been followed, cancelled the order of appointment. The prescribed procedure is supposed to be calling for the candidates from the employment exchange. Against the said order of the Collector, the High Court was moved, but being unsuccessful there, appeal was preferred before the Apex Court and the Hon'ble Apex Court held that under the provisions of Section 83 of the Panchayat Adhiniyam, 1981, as per sub-section (2) of Section 83, no order under sub-section (1) could be made to the prejudice of a party inasmuch as such party has not been given an opportunity of being heard. But in the present case, the petitioner has not been able to point out that which statutory provision requires show cause notice before enquiry into the selection process and same has been violated, meaning thereby, the petitioner has not been able to state that any statutory provision has been violated.

In the matter of Mahendra Kumar Chaurasiya (supra) the petitioner was appointed on daily wages on 17.10.1994 and was regularized vide order-dated 4.3.1996 in pay scale of Rs.950-1530/-. However, pursuant to the government order dated 31.7.01 the Nagar Parishad removed the petitioner from service as per order-dated 6.10.2001 without issuance of show cause notice. In

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that situation, the High Court held that the petitioner was taken initially on daily wages and working on vacant sanctioned post, which was reserved for backward class and the petitioner belonged to the same class. DPC was fixed to consider his case for regularization and duly constituted selection committee considered his case and passed resolution for regularization of the services of the petitioner. Pursuant thereto an order of regularization was passed and the petitioner was appointed on probation for a period of two years. During that period the Government without giving any notice to the petitioner removed the petitioner. On these facts the Court held that *"the petitioner services could not have been dispensed with without giving opportunity of hearing to him."* But the facts of the present case are quite different which will be dealt with later.

10. In this connection the decision relied upon by learned counsel for respondent No.5 is relevant in which the Hon'ble Apex Court after relying upon the earlier decision of the Apex Court in the matter of Krishan Yadav Vs. State of Haryana held that *"where the nature and the extent of illegalities and irregularities committed in conducting a selection have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance"*. In the case of Krishan Yadav the allegations of favouritism and arbitrariness in

holding the selection for the post of Taxation Inspectors by Subordinate Selection Board were made. Those candidates whose performance was excellent were not selected. An inquiry was ordered by the Supreme Court to be held by CBI. The report revealed act of favouritism, selection without interview even on the basis of fake or ghost interview, tampering with the records and fabrication of documents etc. In such circumstances, it was held that entire selection was vitiated even in respect of those who had already been appointed and had been working for a past few years.

In the case of Union of India Versus O. Chakradhar (supra) the Railway Recruitment Board issued an advertisement for recruitment to the posts of Junior Clerk cum Typist, candidates were selected and appointed and they were appointed. Later on, after three years some complaints were received regarding irregularities in the conduct of examination and CBI enquiry was conducted in which serious nature of irregularities were noticed, therefore, the Railway Board took a decision to cancel the entire panel and to terminate the services of all the candidates appointed.

11. If we look into the decision of the Hon'ble Apex Court in the matter of **M/s Bharat Barrel & Drum Manufacturing Vs. L.K. Bose and others** reported in **AIR 1967 SC 361** the Hon'ble Apex Court while explaining the principle of natural justice held that;

"..while considering the question, court should not proceed as if there are any inflexible rules of natural justice of universal application. Court has to consider in each case whether in light of facts and circumstances of case, nature of issues involved in enquiry, nature of

order passed and interest affected thereby, a fair and reasonable opportunity of being heard was furnished.

Again in the matter of **K.L. Tripathi V. State Bank of India and others** reported in **AIR 1984 SC 273** the Hon'ble Apex Court held that:

".... Principles of natural justice have been violated or not has to be judged in the background of nature of charges, the nature of investigation conducted in the background of any statutory or relevant rules governing such enquiries. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular facts, if there be any between the parties. It is true that all the actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether the principle of natural justice would be applicable to a particular situation or the question whether there has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. The rules of natural justice are flexible and cannot be put in any rigid formula."

12. Now, if we look into the facts of the present case in the light of above decisions, the Gram Panchayat Sukhapali invited applications for recruitment of Samvida Shikshak Grade-III and ultimately, 31 candidates were found eligible and they are called for interview. However as per result, only 5 candidates appeared before the selection committee and others were absent. In this case 25 marks were fixed for having knowledge of local dialect and as per prescribed procedure the candidates who were having

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knowledge of local dialect were entitled for 25 marks and if any candidate was not conversant with the local dialect then he was to be awarded zero marks. The complaints regarding irregularities in selection were made to the C.E.O, Janpad Parishad, those complaints were sent to the SDO for enquiry, the SDO called for the records from the Sarpanch of Gram Panchayat, Sarpanch was given opportunity of hearing and during the course of enquiry SDO found that even proper notices for appearing in the interview were not given to the meritorious candidates and in that respect candidates namely Naresh Kumar, Lalit Kumar, Jyothi Kumar, Chandra Kumar, Sharat Chandra & Topendra Kumar were examined and they had stated that even the notice of interview was not given to them. It was further observed that the petitioner herein was the candidate whose percentage of marks was lowest among all the candidates and he was given 25 marks for knowledge of local dialect whereas other candidates namely Tilak Ram Patel, Rakesh Kumar Patel, Hitendra as well as Rambhajan Patel, although they are the residents of Chhattisgarh and having knowledge of local dialect, were granted zero marks. Therefore, the SDO reached to the conclusion that there were mass irregularities in the selection, as such he set aside the selection process and ordered for recalling all the candidates for interview afresh and to select the eligible candidate. Against this order the petitioner preferred an appeal before the Collector, who dismissed the appeal agreeing with the finding of the SDO. Before the Additional Collector the point of violation of principle of natural justice was raised by learned counsel for the petitioner and after hearing counsel for the petitioner, the Additional Collector held that other local candidates were given zero marks regarding the

knowledge of local dialect whereas the petitioner, who was lowest and last candidate in the merit list, was given 25 marks, whereas the other candidates were also knowing the local dialect but deliberately they were given zero marks. The Additional Collector further held that no notice was given to the meritorious candidates at their residence for appearing before the selection committee, as such they could not appear before the selection committee. Therefore, the Additional Collector affirmed the order of the SDO. Even before the Additional Collector counsel for the petitioner could not argue and raised any point that how the order of SDO was perverse, merely by saying that no opportunity of hearing was given to the petitioner by the SDO, the order cannot be set aside. When the SDO conducted an enquiry by calling the record and after giving opportunity of hearing to the Sarpanch of the Gram Panchayat, he reached to the conclusion that notices were not given to the candidates for appearing before the selection committee and even local candidates who were knowing local dialect were given zero marks, whereas the petitioner was the only candidate to whom 25 marks were awarded. In order to set aside the order of the SDO on the ground that no opportunity of hearing was given to the petitioner, counsel for the petitioner ought to have raised the valid points showing that how the order is perverse and how the petitioner could have explained and proved the finding of the SDO to be perverse if the opportunity of hearing was given to him. In fact, everything was recorded in the order of the SDO and the petitioner was required to assail those findings on facts about the perversity of findings of SDO in the appeal saying that had the petitioner was allowed to appear and argue before the SDO he could have explained and proved that the

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notices were given to the other candidates for appearing before the selection committee, similarly that even those local candidates appeared for interview were not knowing the local dialect. Therefore, in the circumstances it cannot be said that the petitioner's right stand seriously prejudiced by not giving notice to him by the SDO before quashing the petitioner's selection.

13. In the result, for the aforesaid reasons, the petition of petitioner deserves to be dismissed and accordingly, it is dismissed.

Sd/-
L.C.BHADOO
Judge

Roshan/-